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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/597,587	07/31/2006	Sadao Nozawa	4749-011	3348

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EXAMINER

MAI, TRI M

ART UNIT	PAPER NUMBER
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3781

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/597,587	Applicant(s) NOZAWA, SADA O	
	Examiner Tri M. Mai	Art Unit 3781	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 6-21 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 6-21 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--------------------------------------------------------------------------------------|-------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____. |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

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1. Claim 17 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

It is unclear where the plurality of concave shaped part in claim 17.

2. Claims 6, 7, 10, 11, 14-17, and 21 are rejected under 35 U.S.C. 102(b) as being anticipated by Weber, or in the alternative, under 35 U.S.C. 103(a) as being unpatentable over Weber in view of either Poirier (4921147) or Diebolt et al. (3929165) or Mikol (4927191). Weber teaches a hollow container with a neck extending upward a mouth, the neck being flexible having flange shaped parts extending in a radial direction from the lower end of the upper neck portion. With respect to the limitation that the flange shaped part being formed to enable one width side to be held in a state being deformed upward as a convex shape and the other deformed downward as a concave shape. The examiner submits that the recitation “formed to enable” is an intended use the neck portion. The various flanges in fig. 6 formed in the state as claimed.

In the alternative, note that Poirier teaches a flange can be deformed upward as a convex shape (the flange labeled as 52' in fig. 2) while the other is held in a state of being deformed downward the flange labeled as 54 in Fig. 2). Further note the convex portion at 56 and concave portion at the opposite, similar with Diebolt showing the convex portion at 18 and the opposite concave, similar with Mikol showing the bending with convex portion 48 and concave portion (near 59) in Fig. 5. Thus, to have the flange in the manner as taught by either Poirier or Diebolt or Mikol would have been obvious to provide the desired bending for the spout.

3. Claims 8, 9, 12, and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over the Weber rejection, as set forth in paragraph 2, and further in view of Chlystun (4095728) or

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Brach et al. (4572412). It would have been obvious for a person having ordinary skill in the art to provide dimple portions as taught by Chylstun, note dimples at 28), or Branch, note dimples 28, to keep the operate the device easily.

4. Claims 18-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Weber in view of either Pourier (4921147) or Diebolt as set forth above, and further in view of Brach et al. (4572412). Brach teaches that it is known in the art to provide only one section flexible gusset for the bending of the flexible spout. Thus, it would have been obvious to one of ordinary skill in the art to eliminate all gussets (comprising portion 12-14) except one to provide the desired bending for the spout and to save material.

5. Applicant's arguments have been fully considered but they are not persuasive. The recitation in claim 6 in which the flange shaped part being formed to enable one width side to be held in a state being deformed upward as a convex shape and the other deformed downward as a concave shape. The examiner submits that the recitation "formed to enable" is an intended use the neck portion. The various flanges in fig. 6 formed in the state as claimed.

In the alternative, applicant is noted that when the flexible spout is bended, the various references of Pourier, Diebolt et al. and Mikol, each shows the various convex and concave portions in the alternate when the spout is bended at an angle. In other words, the spout in Weber is capable of such intended use since the spout structure in Weber and the flexible portions in the various references of Pourier, Diebolt et al. and Mikol, are similar, the spout in Weber must behave in the same manner with alternate convex and concave sections. There is no structural difference between the container in claim 6 and the spout in Weber at all.

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6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tri M. Mai whose telephone number is (571)272-4541. The examiner can normally be reached on M-F 6 am - 3:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony Stashick can be reached on 571-272-4561. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Tri M Mai/
Primary Examiner, Art Unit 3781